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 NORTHERN DISTRICT OF CALIFORNIA

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Todd M. Friedman (216752)
 Darin Shaw (251037)
 Law Offices of Todd M. Friedman, P.C.
 369 S. Doheny Dr. #415
 Beverly Hills, CA 90211
 Phone: 877-206-4741
 Fax: 866-633-0228
 tfriedman@attorneysforconsumers.com
 dshaw@attorneysforconsumers.com
 Attorney for Plaintiff

**UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

JCS

EDUARDO JONES,

) Case No.

CV 11 3506

Plaintiff,

)

COMPLAINT FOR VIOLATION

)

OF FEDERAL FAIR DEBT

)

COLLECTION PRACTICES ACT

)

AND ROSENTHAL FAIR DEBT

)

COLLECTION PRACTICES ACT

vs.

**DIVERSIFIED COLLECTION
 SERVICES, INC.,**

)

)

Defendant.

)

)

I. INTRODUCTION

1. This is an action for damages brought by an individual consumer for Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. §1692, *et seq.* (hereinafter "FDCPA"), and the Rosenthal Fair Debt Collection Practices Act, Cal Civ Code §1788, *et seq.* (hereinafter "RFDCPA"), both of which prohibit debt collectors from engaging in abusive, deceptive, and unfair practices.

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II. JURISDICTION

2. Jurisdiction of this Court arises under 15 U.S.C. §1692k (d).

III. PARTIES

3. Plaintiff, Eduardo Jones ("Plaintiff"), is a natural person residing in Contra Costa county in the state of California, and is a "consumer" as defined by the FDCPA, 15 U.S.C. §1692a(3) and is a "debtor" as defined by Cal Civ Code §1788.2(h).

4. At all relevant times herein, Defendant, Diversified Collection Services, Inc. ("Defendant") was a company engaged, by use of the mails and telephone, in the business of collecting a debt from Plaintiff which qualifies as a "debt," as defined by 15 U.S.C. §1692a(5), and a "consumer debt," as defined by Cal Civ Code §1788.2(f). Defendant regularly attempts to collect debts alleged to be due another, and therefore is a "debt collector" as defined by the FDCPA, 15 U.S.C. §1692a(6), and RFDCPA, Cal Civ Code §1788.2(c).

IV. FACTUAL ALLEGATIONS

5. At various and multiple times prior to the filing of the instant complaint, including within the one year preceding the filing of this complaint, Defendant attempted to collect an alleged debt from Plaintiff.

6. On or about October, 2010, Plaintiff began receiving calls from Defendant. Defendant repeatedly called Plaintiff on his cell phone and at work.

1 7. Plaintiff believes Defendant is attempting to collect an alleged debt
2 for a private student loan he received from Chase Manhattan during the 1980s.
3
4 However, Defendant has failed to identify the original creditor of the alleged
5 debt.

6
7 8. On February 22, 2011, Defendant issued an Order of Wage
8 Withholding to Plaintiff's employer. The document stated the claim was made by
9 American Student Assistance. Defendant has stated that the account was placed
10 with them in September, 2010. Plaintiff is unsure at this time what agreement, if
11 any, he had with American Student Assistance, as his student loan was provided
12 by Chase Manhattan.
13
14

15 9. Defendant's conduct violated the FDCPA and the RFDCPA in
16 multiple ways, including but not limited to:
17

- 18 a) Falsely representing or implying that nonpayment of
19 Plaintiff's debt would result in the seizure, garnishment,
20 attachment, or sale of Plaintiff's property or wages,
21 where such action is not lawful or Defendant did not
22 intend to take such action, including, but not limited to,
23 issuing an order of wage garnishment for an amount
24 owed to a party Plaintiff has not heard of (§1692e(4));
25
26 b) Threatening to take an action against Plaintiff that
27 cannot be legally taken or that was not actually intended
28 to be taken (§1692e(5));
29
30 c) Threatening Plaintiff that nonpayment of Plaintiff's debt
31 may result in the arrest of Plaintiff or the seizure,
32 garnishment, attachment or sale of any property or the
33 garnishment or attachment of wages of Plaintiff, where

1 such action was not in fact contemplated by the debt
2 collector and permitted by the law (Cal Civ Code
3 §1788.10(e));

4 d) Threatening to take an action against Plaintiff that is
5 prohibited by § 1788 of the California Civil Code (Cal
6 Civ Code §1788.10(f));

7 e) Falsely representing that a legal proceeding has been, is
8 about to be, or will be instituted unless payment of a
9 consumer debt is made (Cal Civ Code §1788.13(j));

10 f) Causing a telephone to ring repeatedly or continuously
11 to annoy Plaintiff (Cal Civ Code §1788.11(d));

12 g) Communicating, by telephone or in person, with
13 Plaintiff with such frequency as to be unreasonable and
14 to constitute an harassment to Plaintiff under the
15 circumstances (Cal Civ Code §1788.11(e));

16 h) Causing Plaintiff's telephone to ring repeatedly or
17 continuously with intent to harass, annoy or abuse
18 Plaintiff (§1692d(5));

19 i) Communicating with Plaintiff at times or places which
20 were known or should have been known to be
21 inconvenient for Plaintiff (§1692c(a)(1));

22 j) Repeatedly contacting Plaintiff at his/her place of
23 employment after being informed that such calls are
24 inconvenient to Plaintiff and violate the policy of
25 Plaintiff's employer (§1692c(a)(1)(3)); and

26 k) Engaging in conduct the natural consequence of which
27 is to harass, oppress, or abuse Plaintiff (§1692d)).

28 10. As a result of the above violations of the FDCPA and RFDCPA
Plaintiff suffered and continues to suffer injury to Plaintiff's feelings, personal

1 humiliation, embarrassment, mental anguish and emotional distress, and
2 Defendant is liable to Plaintiff for Plaintiff's actual damages, statutory damages,
3 and costs and attorney's fees.
4

5 **COUNT I: VIOLATION OF FAIR DEBT**
6 **COLLECTION PRACTICES ACT**

7 11. Plaintiff reincorporates by reference all of the preceding paragraphs.
8

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff respectfully prays that judgment be entered
11 against the Defendant for the following:
12

- 13 A. Declaratory judgment that Defendant's conduct
14 violated the FDCPA;
15 B. Actual damages;
16 C. Statutory damages;
17 D. Costs and reasonable attorney's fees; and,
18 E. For such other and further relief as may be just and proper.
19

20 **COUNT II: VIOLATION OF ROSENTHAL**
21 **FAIR DEBT COLLECTION PRACTICES ACT**

22 12. Plaintiff reincorporates by reference all of the preceding paragraphs.
23

24 13. To the extent that Defendant's actions, counted above, violated the
25 RFDCPA, those actions were done knowingly and willfully.

26 14. Further, §1788.17 of the RFDCPA mandates that every debt
27 collector collecting or attempting to collect a consumer debt shall comply with
28

1 the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to
2 the remedies in Section 1692k of, Title 15 of the United States Code statutory
3 regulations contained within the FDCPA, 15 U.S.C. §1692d, and §1692d(5).
4

5 **PRAYER FOR RELIEF**

6
7 WHEREFORE, Plaintiff respectfully prays that judgment be entered
8 against the Defendant for the following:

- 9
10 A. Declaratory judgment that Defendant's conduct
11 violated the RFDCPA;
12 B. Actual damages;
13 C. Statutory damages for willful and negligent violations;
14 D. Costs and reasonable attorney's fees,
15 E. For such other and further relief as may be just and proper.

16 **PLAINTIFF HEREBY REQUESTS A TRIAL BY JURY**

17 Respectfully submitted this 13th day of July, 2011.

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19 By:

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Todd M. Friedman
Law Offices of Todd M. Friedman, P.C.
Attorney for Plaintiff
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